

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
SERGEI CHEPILKO,

Case No. 08-CV-4033

Plaintiff,  
-against-

CIGNA GROUP INSURANCE,

Defendant.

-----X

**MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant CIGNA Group Insurance ("CGI") moves to dismiss Plaintiff's Complaint, dated April 29, 2008.

Plaintiff made a claim against CGI for breach of contract for failing to pay long-term disability insurance benefits pursuant to a contract issued to him through his employer by CGI.

Because ERISA provides the exclusive remedy for any claim related to an employee benefits plan and preempts any state law claim related to employee benefit plans, and Plaintiff's claim clearly relates to an employee benefits plan, his breach of contract claim is preempted and must be dismissed. In addition, because plaintiff named CGI, who is a merely a service mark and did not issue the policy in this matter, this court should dismiss plaintiff's complaint. In support of this motion to dismiss, CGI attaches a memorandum of law.

WHEREFORE, CGI respectfully requests that this Court enter an order dismissing the Complaint against Prudential pursuant to Federal Rule of Civil Procedure 12(b)(6).

Dated: White Plains, New York  
September 2, 2008

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP

By: mmanbitrio  
Michelle M. Arbitrio (MA 2137)  
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3 Gannett Drive  
White Plains, New York 10604  
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[michelle.arbitrio@wilsonelser.com](mailto:michelle.arbitrio@wilsonelser.com)  
File No.: 09856.00217

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing Defendant's Motion to Dismiss Plaintiff's Complaint was served by ECF and sent by overnight mail on September 5, 2008 to the following:

Mr. Sergei Chepilko  
501 Surf Avenue, Apt. 13A  
Brooklyn, NY 11224

mmarbitrio  
Michelle M. Arbitrio, Esq.

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK )  
                        )SS :  
COUNTY OF WESTCHESTER )

UNDINE MASSIAH, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides in Brooklyn, New York.

On the 5th day of September, 2008, deponent served the within

**MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND DECLARATION  
OF MICHELLE M. ARBITRIO IN SUPPORT OF CIGNA GROUP  
INSURANCE'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Upon:

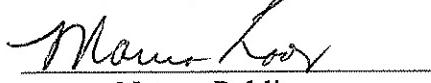
Sergei Chepilko *Pro Se*  
501 Surf Avenue, Apt. #13A  
Brooklyn, New York 11224

a copy of the foregoing which was filed electronically by operation of the Court's electronic filing system and/or by overnight mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.



Undine Massiah  
UNDINE MASSIAH

Sworn to before me this  
5th day of September, 2008

  
\_\_\_\_\_  
Notary Public

**MAURA LOOBY**  
Notary Public, State of New York  
No. 01L04921163  
Qualified in Putnam County  
Commission Expires May 31, 2010